

REMARKS

This Simultaneous Amendment is submitted Simultaneously with filing of the Request for Continuing Examination also responsive to the Office Action of August 12, 2004.

In the Office Action claims 1-8 and 10-12 were rejected under 35 U.S.C. 103(b) over Stephen B. Wicker (Error Control Systems) in view of the patent to Gordon.

Also, the claims were objected to and rejected under 35 U.S.C. 112.

In connection with the Examiner's formal objection and rejection to the claims, it is respectfully submitted that in the present application a Simultaneous Amendment was filed on May 17, 2004 making the corresponding changes in the claims. The above mentioned Simultaneous Amendment eliminated the grounds for the formal objections and rejections raised in the final Office Action of August 12, 2004. It is believed that no further formal changes in the claims are needed.

After carefully considering the Examiner's grounds for the rejection of the claims over the art, applicants have amended claim 1, the broadest claim on file, to more clearly define the present invention and to distinguish it from the prior art.

It is respectfully submitted that the new features of the present invention clearly and patentably distinguish the present invention from the prior art.

Claim 1 specifically defines that the variable redundancy produced by the fire code is used to dynamically adapt a data rate of a source data to an available band width of a respective data channel. The description on page 4, last paragraph, to page 5, first paragraph, clearly explains that an encoder is used to variably establish the redundancy (VCR) and this VCR is used to adapt the redundancy to a data channel. In the next sentence it is explained that the data rate of the source data varies and that for the transmission channel only fixed values for the data rate are possible. This gap is filled by adding additional redundancy bits (adaptation). There are numerous examples for enabling this teaching in the description in conjunction with Figures 3 and 4.

In connection with this, claim 1 has been amended correspondingly.

Turning now to the references and in particular to the patent to Gordon, it can be seen that this reference does not mention the fire code in the context of variable redundancy. The variable redundancy according to the patent to Gordon only shows an exclusive OR redundancy and an RS (Reed-Solomon) redundancy.

In contrast, in accordance with the present invention the inherent fire code redundancy is used to dynamically adapt a data rate of a source data to the fixed data rate of a transmission channel. The patent to Gordon does not disclose these features of the present invention and does not provide any teaching, or hint or suggestion for such features. The same is true for other reference applied by the Examiner.

The Examiner rejected the claims as being obvious over the combination of the references. In connection with this rejection, it is respectfully submitted that it is the Examiner's burden to present a prima fascia case of obviousness. To establish prima fascia obviousness there must be some suggestion or motivation to modify or combine the teachings

disclosed in the references. This suggestion must be found in the prior art and not based on the applicant's disclosure. Also, there must be a reasonable expectation of success. It is respectfully submitted that the above mentioned criteria were not fulfilled in the rejection of the claims.

It is believed that the present application can not be considered as obvious from the combination of the references applied by the Examiner.

The claims currently on file should be considered as patentably distinguishing over the art and should be allowed.

Reconsideration and allowance of the present application is most respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place this case in condition for final allowance, then it is respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion might be

helpful in advancing this case to allowance, he is invited to telephone the undersigned (at 631-549-4700).

Respectfully submitted,


Michael J. Striker
Attorney for Applicants
Reg. No. 27233

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